

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
<b>Section 272(d) Biennial Audit of</b>	)	<b>EB Docket No. 03-199</b>
<b>SBC Communications Inc.</b>	)	

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

**I. INTRODUCTION AND SUMMARY**

SBC's second section 272 Biennial Audit Report ("Audit Report") overwhelmingly demonstrates SBC's compliance with the FCC's section 272 rules. The SBC BOCs and the section 272 affiliates operated independently, maintained separate books and accounts, separate officers, and conducted transactions on an arms length basis. In addition, the Audit Report shows that SBC did not discriminate in favor of the section 272 affiliates in the provision of goods and services and highlights SBC's commitment to 272 compliance through an extensive system of internal controls to ensure compliance including a comprehensive training program, 272 compliance team and coordinators and compliance policies and guidelines.

Nevertheless, AT&T, the sole commenter in this proceeding, twists the facts disclosed in the Audit Report and takes many incidents out of context, attempting to make a case for enforcement action against SBC. AT&T recycles the same hollow arguments and criticisms that were heard and rejected by the Commission in the first Biennial Audits of SBC, BellSouth and Verizon. In fact, AT&T has reused the same comments so often that it mistakenly refers to SBC as BellSouth in its filing.<sup>1</sup> But, as before, AT&T's criticisms are without merit.

In this Agreed Upon Procedures engagement, the auditors were required to note all findings regardless of materiality. Consequently, the Audit Report discloses isolated, minor technical errors, none of which illustrate any systemic or chronic pattern of noncompliance. Yet, AT&T

---

<sup>1</sup> See AT&T Comments, p. 10, (reference to BSLD); See also Affidavit of Robert M. Bell on behalf of AT&T, ¶ 4.

cites to these minor technical errors to support its claims that SBC is in violation of the section 272 rules. This is absurd. Despite these minor isolated incidents, the 200 plus page Audit Report is replete with facts that demonstrate SBC's overwhelming compliance with section 272.<sup>2</sup> Accordingly, the Commission should reject AT&T's claims that enforcement action is warranted.

## **II. THE AUDIT REPORT CONFIRMS THAT SBC IS IN COMPLIANCE WITH SECTION 272.**

### **A. SBC Did Not Discriminate In Favor Of The Long Distance Affiliates In The Provision of Goods, Services, Facilities and Information.**

The auditors performed an assessment of BOC procurement practices with the SBC long distance affiliates, compared the terms, conditions and billings of comparable services provided by the BOCs to the long distance affiliate and unaffiliated carriers, and observed call center activities for compliance with Equal Access requirements. The results of each procedure clearly substantiate SBC's compliance with the FCC's nondiscrimination safeguards and confirms that SBC did not discriminate in favor of the long distance affiliates in the provision of goods, services, facilities and information.

Despite these results, AT&T falsely claims that the SBC BOC did not follow the section 272(c) non-discrimination requirements because it awarded a contract for operated-assisted public payphone long distance service to its own section 272 affiliate. Yet, AT&T bases this claim solely on a criteria matrix that merely identified the factors that were used to evaluate the bids.<sup>3</sup>

AT&T's claims must be rejected for two reasons. First, AT&T incorrectly assumes that the criteria identified on the matrix were allocated equal weight, when in fact, SBC's procurement process weighs each factor differently based on business priorities. The audit showed that SBC

---

<sup>2</sup> In fact, the Commission recently commented that the Audit Report did not disclose "systemic or significant issues warranting enforcement action." See Section 272(b)(1)'s "Operating Independently" Requirement for Section 272 Affiliates, CC Docket No. 03-228, *Report and Order*, FCC 04-54, (rel. March 17, 2004) at ¶12.

<sup>3</sup> AT&T Comments, p. 10 ("[I]t 'appears' that Unaffiliated Entity 3 had the 'most favorable' bid overall").

followed its business procedures and used objective commercial criteria, as required by the Act,<sup>4</sup> to select the most qualified carrier.<sup>5</sup>

AT&T also incorrectly assumes that SBCLD was the only vendor selected by the BOC. Actually, SBC continued its preexisting relationship with three of the four unaffiliated entities; one of the three was AT&T. Thus, SBC's selection of SBCLD as one of its suppliers for these services is consistent with the Act and the Commission's nondiscrimination requirements.

**B. SBC BOCs Did Not Discriminate In Favor of the Long Distance Affiliate In The Provision of Access Services.**

The auditor conducted procedures to determine whether the SBC BOCs discriminated in favor of their 272 affiliates in the provision of access services and "noted no differences between how the section 272 affiliates, the SBC BOC itself and the other BOC affiliates were treated compared to the non-affiliates."<sup>6</sup>

The auditor documented that the SBC BOCs provide access services to interexchange carriers ("IXCs") pursuant to generally available tariffs, which ensures that the SBC BOCs provide services to all carriers on the same terms and conditions. In addition, the auditor documented that SBC serves all IXCs through a separate wholesale organization within the company, SBC Industry Markets, where all IXCs are assigned to an Account Team to manage ordering, provisioning and servicing issues for the IXCs. The auditor also documented that all entities, affiliated and unaffiliated, order access services from the SBC BOCs using the exact same process - by submitting an Access Service Request ("ASR"). The auditors also noted that once submitted, ASRs are processed, provisioned and billed using the exact same procedures and

---

<sup>4</sup> Section 273(e)(2) "Each Bell Operating Company . . . shall make procurement decisions and award all supply contracts for equipment, services and software on the basis of an objective assessment of price, quality, delivery and other commercial factors."

<sup>5</sup> Report of Independent Accountants on Agreed Upon Procedures for SBC Communications Inc., (Dec. 15, 2003) Appendix A, p. 23. ("Audit Report").

<sup>6</sup> Audit Report, p. 30.

systems for all entities. Thus, SBC's processes and procedures ensure that all IXC's receive end-to-end service in a nondiscriminatory manner.

In addition, the auditors obtained detailed performance measurement data from SBC, analyzed how the data was tracked, and summarized selected portions of the data in the Audit Report. As discussed in SBC's Reply Comments in its first Biennial Audit, SBC tracks performance for access services in the following areas: (1) successful completion of orders according to desired due date; (2) time from the BOC promised due date to circuit being placed in service; (3) time to Firm Order Confirmation; (4) time from PIC Change request to implementation; (5) time to restore and trouble duration; (6) time to restore PIC after trouble incident; and (7) mean time to clear network/duration of trouble.<sup>7</sup>

Oddly, AT&T can't make up its mind regarding SBC's performance. First, AT&T claims that SBC's performance measures are useless,<sup>8</sup> but simultaneously AT&T relies on the same performance measures to support its claims that SBC provides better service to its 272 affiliates than to nonaffiliated entities. This is just another example where AT&T twists the facts to concoct support for enforcement action against SBC. Here, AT&T incorrectly concludes that the SBC BOCs provided discriminatory performance to its 272 affiliates based solely on the performance results for selected measures.<sup>9</sup> Based on the Commission's previous guidance in this area, AT&T's argument is wrong. The Commission has stated:

[v]olumes may be so low as to render the performance data inconsistent and inconclusive. Performance data based on low volumes of orders or other transactions is not as reliable an

---

<sup>7</sup> These are the same measures and design that SBC committed to track in each of its section 271 applications that were approved by the Commission. These measures are based on the proposed design outlined by the Commission in Appendix C of the *Non Accounting Safeguards Order*.

<sup>8</sup> AT&T reiterates its arguments from SBC's first biennial audit that: (1) the performance measures improperly exclude special access services provided by the BOC directly to its retail customers, and includes only access services that the BOCs provide to SBC affiliates; and (2) the performance measures are insufficient or flawed. As SBC stated in its comments to the first biennial audit, these arguments are inappropriate for this proceeding. The purpose of the audit is to determine if SBC is in compliance with the existing rules and not to introduce or create new rules for the Section 272 process.

<sup>9</sup> AT&T Comments, pp. 7-10.

indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data is based on a low number of observations, small variations in performance may produce swings in the reported performance data.<sup>10</sup>

This certainly applies to SBC's performance for special access services. SBC's 272 affiliates' order volumes for special access services are so low that valid comparisons are impossible based solely on the performance results. No statistically valid conclusions can be based on this data. Instead, the auditors obtained SBC's internal parity analysis data along with SBC's explanations for the out-of-parity results. In light of the entire record available to the Joint Oversight Team ("JOT"), the audit demonstrates SBC's continued compliance with the section 272(e) nondiscrimination safeguards because it shows that the SBC BOCs provided all services to IXCs on an equal basis through generally available tariffs and have nondiscriminatory fulfillment and maintenance processes for all IXC customers. It is for this reason that no other IXC other than AT&T even alleges that SBC provided discriminatory service.<sup>11</sup>

**C. SBC Conducted Transactions with Its Section 272 Affiliates On An Arms Length Basis and Did Not Violate The Disclosure Requirements.**

In Objective IV, the auditor performed a comprehensive review of SBC's corporate and financial records to evaluate the transactions between the SBC BOCs and the SBC 272 affiliates. In addition, the auditor examined the SBC BOCs' processes for tracking and responding to competitors' complaints concerning the section 272 requirements and noted that no complaints were received during the engagement period.<sup>12</sup> The auditor also obtained and reviewed SBC's procedures for affiliate transactions and noted that SBC's Internet postings, including rates,

---

<sup>10</sup> Joint Application by SBC Communications Inc. , Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-94, *Memorandum Opinion and Order*, 16 FCC Rcd 20719 at Appendix C, ¶11 (2001).

<sup>11</sup> AT&T inferred that the SBC BOCs violated the Section 272(e) imputation requirements because the section 272 affiliates paid \$10.5 million less than the BOC recorded as revenue for exchange access services. AT&T Comments, p. 12. However, as represented by the Company to the auditors, the difference is the expected result of timing differences in the amounts recorded and billed by the BOCs versus the subsequent recording of expenses and payments by the 272 affiliates during the audit period.

<sup>12</sup> Audit Report, pp. 8-9.

terms, conditions, frequency, effective dates, termination dates, description of services and pricing methodology, provided enough detail to evaluate compliance with the FCC's accounting rules.<sup>13</sup> In addition, the auditor tested a statistically valid sample of BOC billings to the 272 affiliates for services not made available to third parties for compliance with the affiliate transactions rules.

AT&T attempts to use three instances where the SBC BOCs provided service to a 272 affiliate prior to the execution of a written agreement and six late Internet postings as evidence that SBC is undermining the purpose of section 272(b). However, the facts of each incident demonstrate that these were minor technical errors that had no impact on the IXC market. Six of the incidents cited by AT&T involve the Customer Account Record Exchange ("CARE") family of products that have been available to IXCs like AT&T for many years and have been marketed to IXCs on SBC's Prime Access Internet website throughout the engagement period. In addition, the SBC BOCs provided these services to the 272 affiliates using SBC's Standard Practice Agreements with no deviations. Therefore, SBC's 272 affiliates received the same terms and conditions for these services that the SBC BOCs provide to other IXCs. Consequently, these inadvertent incidents did not impact the availability of those services to other IXCs on a nondiscriminatory basis.<sup>14</sup>

Similarly, two of the remaining three incidents highlighted by AT&T involved tariffed services that became generally available to all IXCs in the 1990s before any SBC BOCs obtained authority to provide long distance in any in-region state. In these two incidents, the SBC BOCs provided two tariffed services, Interexchange Carrier Pays service and Billing Name and Address service, to the 272 affiliate pursuant to tariff but inadvertently failed to timely identify

---

<sup>13</sup> Audit Report, pp. 16-17.

<sup>14</sup> AT&T also argues that these late postings frustrate any effort by unaffiliated carriers to determine if the section 272 affiliate is the beneficiary of below cost arrangements leading to price squeezes against the section 272 affiliate's competitors. This claim is also without merit since SBC's use of Standard Practice Agreements ensures that the 272 affiliates are charged the same rates and operate under the same general terms and conditions as other IXCs. In addition, all carriers have the same options under the standard agreements and the billing processes are identical for all carriers.

these services as affiliate transactions on the SBCLD Regulatory Affairs website. Clearly, no carrier can credibly claim to be harmed by these late postings since these services have been available to all IXC's since the 1990s.<sup>15</sup>

The remaining incident included in AT&T's comments was discovered by SBC in a routine internal compliance review of affiliate transactions where SBC learned that SBC BOC personnel provided very limited Equal Employment Opportunity services to employees of SBC's long distance affiliate without a written agreement. After learning of this activity, SBC remedied this mistake by executing and posting an affiliate agreement and retroactively billed the 272 affiliate for these services.

AT&T grossly mischaracterizes these inadvertent errors as "brazen and systemic,"<sup>16</sup> but they are simply unintentional administrative errors that do not come close to demonstrating a large scale, systemic or recurring problem. Nor did these errors accrue any competitive advantage to the SBC 272 affiliates or impose any disadvantage to unaffiliated carriers. Despite AT&T's self-serving claims to the contrary, SBC takes its 272 obligations seriously and has implemented comprehensive training and procedures to ensure compliance with the 272 requirements. In fact, each of the incidents cited by AT&T was detected by SBC's internal review process and self-disclosed to the auditor.

#### **D. SBC's 272 Affiliates Were Structurally Separate and Operated Independently From The BOCs.**

The auditor performed comprehensive testing to assess SBC's compliance with the structural separation requirements of section 272. Among the many procedures, the auditor inspected the corporate records and organization charts of the SBC BOCs and the 272

---

<sup>15</sup> SBC's Billing Name and Address service was tariffed in Nevada in 1993, in the Southwest region in 1994, and in California in 1997. SBC began offering Interexchange Carrier Pays service in the Southwest region in approximately 1998 and tariffed the service in 2003.

<sup>16</sup> AT&T Comments, p. 15.

affiliates and noted that “no officers or directors appeared on both lists.”<sup>17</sup> In addition, the auditors verified that the books, records and accounts of the 272 affiliates were maintained separately from those of the BOCs. They reviewed the general ledgers maintained by the BOCs and the 272 affiliates and noted that they found no link between them.<sup>18</sup> The auditors also confirmed that the 272 affiliates had no arrangements that would permit a creditor to have recourse to the assets of the BOCs. Specifically, the auditors reviewed the 272 affiliates revolving lines of credit and reviewed all lease agreements with annual obligations greater than \$500,000. Without exception, the auditor noted that there was no recourse to the SBC BOCs’ assets either directly or indirectly.

AT&T obviously overlooked the auditor’s notes in this section of the Audit Report. According to AT&T, the 272 affiliates’ revolving line of credit with parent companies, SBC Communications Inc. and Ameritech Corp., would somehow *permit* recourse to the SBC BOCs’ assets.<sup>19</sup> AT&T is grossly mistaken. In fact, the lines of credit referenced in the Audit Report were *unsecured* and the audit report specifically states that there are “no guarantees of recourse to the SBC BOCs’ assets, either directly or indirectly, through another affiliate.”<sup>20</sup> Again, AT&T haphazardly misrepresents the facts in an attempt to discredit SBC.

---

<sup>17</sup> Audit Report, p. 6.

<sup>18</sup> Audit Report, p. 5.

<sup>19</sup> AT&T Comments, p. 16.

<sup>20</sup> Audit Report, p. 7.



### III. CONCLUSION

As discussed above, AT&T's criticisms of SBC's compliance with the 272 safeguards are without merit and must be rejected. The minor items noted by AT&T should not overshadow the voluminous evidence that demonstrates SBC's overwhelming compliance with the section 272 requirements.

Respectfully Submitted,

**/s/ Terri L. Hoskins**

TERRI L. HOSKINS  
GARY L. PHILLIPS  
PAUL K. MANCINI

Attorneys for  
SBC COMMUNICATIONS, INC.

1401 I Street, NW  
Suite 400  
Washington, DC 20005  
(202) 326-8893- Phone  
(202) 408-8763- Facsimile

June 9, 2004